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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,341	11/25/2003	George J. Matthews	5377-002-27	3918

7590 04/04/2006  
Supervisor, Patent Prosecution Services  
PIPER RUDNICK LLP  
1200 Nineteenth Street, N.W.  
Washington, DC 20036-2412

EXAMINER
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NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/720,341	MATTHEWS, GEORGE J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tam Nguyen	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)                      |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| Paper No(s)/Mail Date ____.   | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet.</u> |

Continuation of Attachment(s) 6). Other: Foreign Reference DE 4113135 A1.

A handwritten mark, possibly a signature or initials, consisting of a stylized 'B' or '13' with a horizontal line extending to the right.

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

In Page 1, on line 11 is the phrase "complications the result from". It should be restated as --complications that result from--

Appropriate correction is required.

### ***Claim Objections***

2. Claims 9, 16 and 17 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

In claim 19, on line 10 is the phrase "extending said supporting section". It should be restated as --extending from a supporting section--.

With regard to claims 16 and 17, applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 16 and 17 fail to further limit the claim because the claims disclose specifics regarding the user support which is not part of the invention.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the mattress of the bed" in line 5 and "the surface of the mattress" on line 8. There is insufficient

antecedent basis for these limitations in the claim. Note, applicant has only disclosed that the device is usable with a bed. That is, the bed is not part of the invention.

Applicant may correct this rejection by restating the respective phrases as follows:

--a mattress of a bed-- and --a surface of the mattress--.

Claims 3 and 12 recite the limitation "said mounted housing" in lines 2 and 4 respectively. Claims 8 and 10 recite the limitation "the foot end of the mattress" in line 2 of their respective claims. Claim 9 recites the limitations "the surface of said bed mattress" and "said support section" in lines 7 and 10 respectively. There is insufficient antecedent basis for these limitations in the claims.

4. Claims 2-8 and 10-14 are also rejected for being dependent on rejected base claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by McJunkin, Jr. et al. (4,925,184).

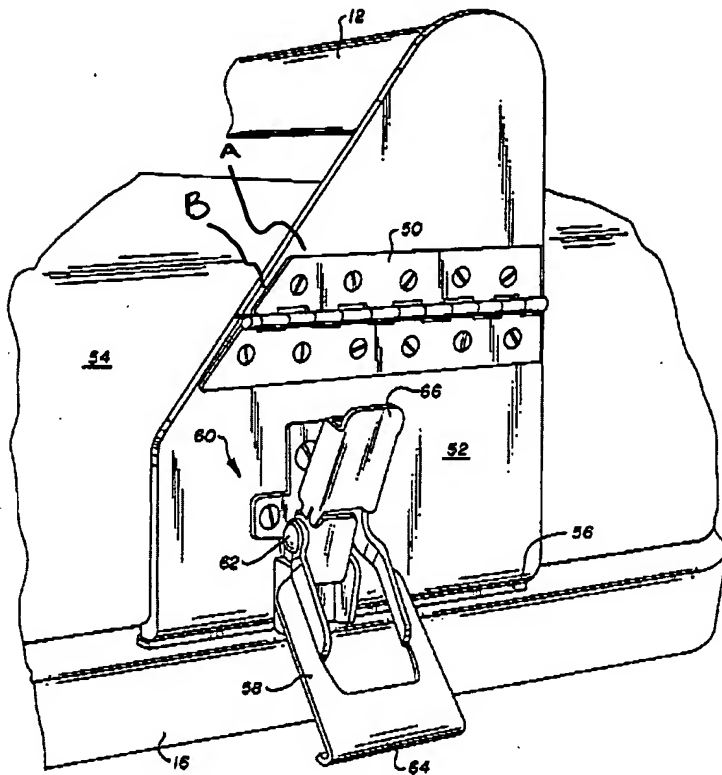
5. As to claim 1, McJunkin et al. disclose an exercise device comprising a base unit having a first portion (64) that can be positioned underneath a mattress (54) of a bed, a second portion (52) that can abut an end of the mattress, a top-side unit having a first portion (A) that can be positioned to rest on a surface of the mattress, and a second

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portion (B) of the top-side unit that is attachable to the second portion of the base unit, a first pedal unit that includes a first pedal portion (42) and at least one shaft (22) connecting the first pedal portion to a receiving portion end (28) located on the top-side unit wherein bed ridden users may use the pedal portion to perform bicycle like exercises with their hands or feet (see Fig. 4 below).

6. As to claims 9 and 10, McJunkin et al. disclose an exercise device comprising an anchoring base unit that includes a frame portion (64) and at least two attachment sections (52) wherein the frame portion is stabilized by being positioned beneath a bed mattress (54) and the two attachment sections are orthogonal to the frame portion (see Fig. 5) and they both abut a foot end of the bed mattress, a top-side unit comprising a support portion (B) and at least two connecting sections (A) wherein the support portion is positioned to rest on a surface of the bed mattress and the connecting sections are capable of being attached to the two attachment sections, a mounted housing, perpendicularly extending from a support section (12) of the top-side unit, comprises a receiving feature (24) and a first pedal unit that includes a first pedal (42) and at least one shaft (22) connecting the pedal portion to the receiving feature (see Figs. 4 below and 1 & 5 in the reference).

**FIG. 4**



Claims 1, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Craig (3,848,870).

7. As to claims 1, 7 and 8, Craig discloses an exercise device comprising a base unit having a first portion (12) that can be positioned underneath a mattress of a bed, a second portion (18a) that can abut an end of the mattress, a top-side unit having a first portion (36) that can be positioned to rest on a surface of the mattress, and a second portion (18b) of the top-side unit that is attachable to the second portion of the base unit, a first pedal unit that includes a first pedal portion (120) and at least one shaft (142) connecting the first pedal portion to a receiving portion end (52) located on the top-side unit wherein bed ridden users may use the pedal portion to perform bicycle like

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exercises with their hands or feet, the first pedal portion (120) is connected to the first receiving end (52) by a plurality of telescopic slidable shafts (84,86) and said second portion of the base unit (18a) can abut a foot/lower end of the mattress (see Fig. 1).

Claims 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Anmelder (SE 41 13 135 A1).

8. As to claim 15, Anmelder discloses an exercise device comprising a base unit having a first portion (4) positioned underneath a user support (5), a second portion (9) that abuts an end of the user support, a top-side unit having a first portion (10) positioned to rest on a surface of the user support, and a second portion (2) of the top-side unit is attached to the second portion of the base unit, a first pedal unit (18) that includes a first pedal portion (19) and at least one shaft (11) connecting the first pedal portion to a receiving portion end located on the top-side unit wherein bed ridden users may use the pedal portion to perform bicycle like exercises with their hands or feet (see Figs. 1-3).

9. As to claims 16 and 17, Anmelder discloses an exercise device as described above (see discussion of claim 15). Anmelder further discloses that the device is usable with any of an array of bed types including flat bed and adjustable bed mattresses (see Figs. 1 & 2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the



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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McJunkin et al. '184 in view of Kepiro '732.

10. As to claim 2, McJunkin discloses an exercise device as described above (see discussion of claim 1). McJunkin does not disclose a second pedal unit that includes a second pedal portion having a shaft connected to a second receiving location on the top-side unit wherein bed-ridden persons may use both pedal portions to exercise their hands and feet. Kepiro discloses an exercise device suitable for use with a user on a cot wherein the device includes first and second pedal units having shafts (34) connected to receiving locations (38,38') such that cot/bed-ridden users may perform bicycle-like exercises simultaneously with their hands and feet (see Fig. 1 & Col. 2, lines 63-66). At the time of the invention it would have been obvious to a person of ordinary skill in the art to substitute McJunkin's pedal unit with Kepiro's two pedal units such that a user can exercise more efficiently by rotating his hands and feet simultaneously.

11. As to claim 3, McJunkin and Kepiro disclose a modified exercise device as described above (see discussion of claim 2). Kepiro further discloses a housing that encloses both receiving ends, and said mounted housing extends orthogonally from the first portion (A) of the top-side unit (see Fig. 4 above).

12. As to claim 11, McJunkin discloses an exercise device as described above (see discussion of claim 9). McJunkin does not disclose that the first pedal portion is connected to the first receiving feature by a plurality of telescopic slidable shafts.

Kepiro discloses an exercise device suitable for use with a user on a cot wherein a pedal portion (12) is connected to a first receiving portion (38) by a plurality of telescopic slidable shafts (32, 34) (see Fig. 1 & Col. 2, lines 63-66). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make McJunkin's support rods (22) telescopically adjustable such that user's of various heights can use the device without having to move the entire device along the bed.

13. As to claims 12-14, McJunkin discloses an exercise device as described above (see discussion of claim 9). McJunkin does not disclose a second pedal unit that includes a second pedal portion having a shaft connected to a second receiving location on the top-side unit wherein bed-ridden persons may use both pedal portions to exercise their hands and feet.

Kepiro discloses an exercise device suitable for use with a user on a cot wherein the device includes first and second pedal units having shafts (34) connected to receiving locations (38,38') such that cot/bed-ridden users may perform bicycle-like exercises simultaneously with their hands and feet (see Fig. 1 & Col. 2, lines 63-66). Kepiro also discloses that the first (12) and second pedal portions (20) are respectively connected to first and second receiving features (38,38') by telescopic slidable shafts (see Fig. 2). At the time of the invention it would have been obvious to a person of ordinary skill in the art to substitute McJunkin's pedal unit with Kepiro's two pedal units such that a user can exercise more efficiently by rotating his hands and feet simultaneously at variable distances relative to the anchoring base unit.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craig (3,848,870).

14. As to claims 4 and 5, Craig discloses an exercise device as described above (see discussion of claim 1). Craig also discloses that the base unit is a hollow frame wherein the first portion (12) of the base is orthogonal to the second portion (18a) of the base and the top-side unit is a hollow frame wherein the first portion (36) of the top-side unit is orthogonal to the second portion (18b) of the top side unit (see Fig. 1). Craig does not disclose that the hollow frame is made of steel. Examiner takes Official Notice that the prior art includes exercise devices having frame components made from tubular steel. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Craig's base unit from any of an array of materials including steel since it is well known for its strength and durability.

15. As to claim 6, Craig discloses a modified exercise apparatus as described above (see discussion of claim 5). Craig does not disclose that the second portion of the top side unit is a male hollow frame insertable into the second portion of the base frame unit wherein the second portion of the base unit is a female hollow frame. At the time of the invention it would have been obvious to a person of ordinary skill in the art to make the second portion of the top-side unit or the second portion of the base unit a male hollow frame as long as the portions remained telescopically adjustable, even if it requires new adjustable means such as pop-pins, such that a user would still be able to adjust the height of the pedal portions for improved comfort during exercise.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anmelder in view of Kepiro (4,881,732).

16. As to claim 18, Anmelder discloses an exercise device as described above (see discussion of claim 15). Anmelder does not disclose a second pedal unit such that bed-ridden users may perform bicycle-like exercises simultaneously with their hands and feet. Kepiro discloses an exercise device suitable for use with a user on a cot wherein the device includes first and second pedal units such that bed-ridden users may perform bicycle-like exercises simultaneously with their hands and feet (see Fig. 1 & Col. 2, lines 63-66). At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the teaching of Kepiro to have two pedal units to Anmelder's device such that a user can exercise more efficiently with two pedal units by rotating his hands and feet simultaneously.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Szabo et al. '426, Shoor '591, Mousel '464 and Smith '435 are representative of the prior art that disclose cycling exercise devices that are adapted to be coupled to beds or mattresses.

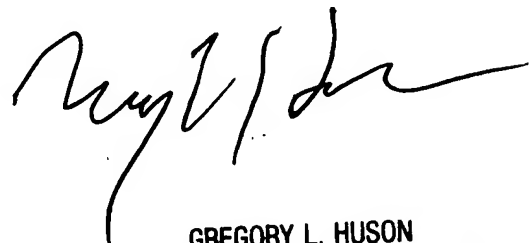
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 22, 2006

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A handwritten signature in black ink, appearing to read 'Gregory L. Huson', written in a cursive style.

GREGORY L. HUSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700